

REMARKS

This Amendment is responsive to the Notice of Panel Decision from Pre-Appeal Brief Review mailed on March 5, 2008. Applicants filed a Notice of Appeal and Pre-Appeal Brief Request for Review on January 3, 2008. Rather than proceed with the Appeal, Applicants have filed a Request for Continued Examination together with the present Amendment.

Claims 1, 26 and 28 are amended. Claim 2 is cancelled. Claims 25, 26 and 29-33 are withdrawn. Applicants respectfully submit that upon the allowance of independent claim 1, withdrawn dependent claims 25, 26, and 29-33 should also be allowed.

Claims 1, 3-19 and 22-33 are pending.

As a preliminary matter, Applicants' counsel would like to thank the Examiner for the courteous and productive telephone interview held on March 24, 2008, the details of which are set forth below.

The claims remain rejected as set forth in the final Office Action, as follows:

Claims 1-11, 13-24, 27 and 28 remain rejected under 35 U.S.C. § 102(b) as being anticipated by Lerch (DE 199 52 359 C1).

Claim 12 remains rejected under 35 U.S.C. § 103(a) as being unpatentable over Lerch in view of Akerfeldt (US 6,508,828) and Bonutti (US 6,045,551).

Applicants respectfully traverse these rejections in view of the amended claims and the following comments.

Summary of March 24, 2008 Telephone Interview

On March 24, 2008 Applicants' undersigned counsel conducted a telephone interview with the Examiner to discuss the Pre-Appeal Brief Review conference and to discuss potential claim amendments for overcoming the prior art of record. In particular, Applicants' counsel and the Examiner discussed several possible amendments that the Examiner indicated would overcome the Lerch reference. In particular, three possible amendments for overcoming Lerch were discussed, as follows:

1. Amend claim 1 to better define the tension band, in particular to specify the width of the tension band. The Examiner indicated that such an amendment would distinguish over the wire used in Lerch and similar prior art;

2. Amend claim 1 to further define how the hook element penetrates into the band. The Examiner indicated that amending claim 1 to specify that the hook element penetrates "completely through the band" would overcome Lerch. The Examiner further indicated that most prior art that used wire or thread taught away from penetration since penetration would break the wire or thread, so that adding further limitations regarding the penetration would distinguish over Lerch and other prior art that used a thread or wire; or

3. Amend claim 1 to further define the structural features of the hook element.

The Examiner indicated that an amendment of claim 1 along any one of foregoing lines would serve to overcome the prior art of record.

Discussion of Amended Claims

Claim 1 is amended herein as discussed with the Examiner. In particular, claim 1 is amended to specify that a height of the one or more hook elements is greater than a height of the at least one tension band (see, e.g., Applicants' specification, page 15, first para., and Figures 1 and 4).

Claim 1 is also amended to specify that in a fixing position, a hook tip of each of the one or more hook elements penetrates completely through the at least one tension band (see, e.g., Applicants' specification, page 15, first para. and Figures 1 and 4).

Claim 1 is also amended to specify that, at least in an area of the at least one tension band where the penetration occurs, a width of the at least one tension band is at least five times greater than the height of the at least one tension band (see, e.g., Applicants' specification, page 3, lines 14-15).

Claims 26 and 28 are amended to conform to the changes made to claim 1.

Discussion of Lerch

Claims 1-11, 13-24, 27 and 28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lerch. This rejection is respectfully traversed. An anticipation rejection requires that each and every element of the claimed invention as set forth in the claim be provided in the cited reference. See *Akamai Technologies Inc. v. Cable & Wireless Internet Services Inc.*, 68 USPQ2d 1186 (CA FC 2003), and cases cited therein. As discussed in detail below, Lerch does not meet the requirements for an anticipation rejection.

As discussed and agreed with the Examiner during the telephone interview, the amendments to claim 1 overcome Lerch and the remaining prior art of record.

Lerch does not disclose or remotely suggest that at least one tension band is fixable relative to the outer abutment element by penetration of the one or more hook elements into the at least one tension band such that, in a fixing position, a hook tip of each of the one or more hook elements penetrates completely through the at least one tension band, as claimed by Applicants.

Further, Lerch does not disclose or remotely suggest the use of one or more hook elements and at least one tension band, where a height of the one or more hook elements is greater than a height of the at least one tension band, as claimed by Applicants.

In addition, Lerch does not disclose or remotely suggest that, at least in an area of the at least one tension band where the penetration occurs, a width of the at least one tension band is at least five times greater than the height of the at least one tension band, as claimed by Applicants.

As Lerch does not disclose each and every element of the invention as claimed, the rejections under 35 U.S.C. § 102(b) are believed to be improper, and withdrawal of the rejections is respectfully requested. See, *Akamai Technologies Inc.*, *supra*.

Applicants respectfully submit that the present invention is not anticipated by and would not have been obvious to one skilled in the art in view of Lerch, taken alone or in combination with any of the other prior art of record.

Further remarks regarding the asserted relationship between Applicants' claims and the prior art are not deemed necessary, in view of the amended claims, the foregoing discussion, and

the agreement reached with the Examiner during the telephone interview. Applicants' silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection.

Withdrawal of the rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) is therefore respectfully requested.

Conclusion

The Examiner is respectfully requested to reconsider this application, allow each of the pending claims and to pass this application on to an early issue. If there are any remaining issues that need to be addressed in order to place this application into condition for allowance, the Examiner is requested to telephone Applicants' undersigned attorney.

Respectfully submitted,



Douglas M. McAllister
Attorney for Applicant(s)
Registration No.: 37,886
Lipsitz & McAllister, LLC
755 Main Street
Monroe, CT 06468
(203) 459-0200

ATTORNEY DOCKET NO.: HOE-790

Date: April 3, 2008